

"(i) such requirement shall not be construed as requiring the practice to have continued for more than 10 years. and

"(ii) a practice shall not fail to be treated as long-standing merely because such practice began after 1978.

"(3) AVAILABILITY OF SAFE HARBORS.—Nothing in this section shall be construed to provide that subsection (a) only applies where the individual involved is otherwise an employee of the taxpayer.

"(4) BURDEN OF PROOF.—

"(A) IN GENERAL.—If—

"(i) a taxpayer establishes a prima facie case that it was reasonable not to treat an individual as an employee for purposes of this section. and

"(ii) the taxpayer has fully cooperated with reasonable requests from the Secretary of the Treasury or his delegate.

then the burden of proof with respect to such treatment shall be on the Secretary.

"(B) EXCEPTION FOR OTHER REASONABLE BASIS.

—In the case of any issue involving whether the taxpayer had a reasonable basis not to treat an individual as an employee for purposes of this section, subparagraph (A) shall only apply for purposes of determining whether the taxpayer meets the requirements of subparagraph (A). (B). or (C) of subsection (a)(2).

"(5) PRESERVATION OF PRIOR PERIOD SAFE HARBOR.—If—

"(A) an individual would (but for the treatment referred to in subparagraph (B)) be deemed not to be an employee of the taxpayer under subsection (a) for any prior period, and

"(B) such individual is treated by the taxpayer as an employee for employment tax purposes for any subsequent period.

then, for purposes of applying such taxes for such prior period with respect to the taxpayer, the individual shall be deemed not to be an employee.

"(6) SUBSTANTIALLY SIMILAR POSITION.—For purposes of this section, the determination as to whether an individual holds a position substantially similar to a position held by

another individual shall include consideration of the relationship between the taxpayer and such individuals."

(b) EFFECTIVE DATES.— 26 use 3401

(1) IN GENERAL.—The amendment made by this section

shall apply to periods after December 31, 1996.

(2) NOTICE BY INTERNAL REVENUE SERVICE.—Section 530(e)(1) of the Revenue Act of 1978 (as added by subsection

(a)) shall apply to audits which commence after December 31, 1996.

(3) BURDEN OF PROOF.—

(1) IN GENERAL.—Section 530(e)(4) of the Revenue Act of 1978 (as added by subsection (a)) shall apply to disputes involving periods after December 31, 1996.

(2) No INFERENCE.—Nothing in the amendments made by this section shall be construed to infer the proper treat-